

REMARKS

Claims 1-12 and 27-35 remain pending in this application, of which claims 1, 11, and 12 are independent. By this Amendment, Applicants propose to amend claims 1 and 10-12. No new matter has been added by this Amendment.

I. Claim Rejections Under 35 U.S.C. § 103(a)

In the Office Action mailed December 11, 2008 ("Office Action"), claims 1-3, 5, 9-12, and 27-35 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,834,182 ("Fu") in view of European Patent Publication No. 1233273 ("Gigliotti"); claims 4 and 6 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fu in view of Gigliotti and further in view of U.S. Patent No. 5,756,967 ("Quinn"); and claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fu in view of Gigliotti and further in view of U.S. Patent No. 6,961,368 ("Dent").

Applicants respectfully traverse the 35 U.S.C. § 103(a) rejections of claims 1-12 and 27-35 as presently amended, because the Office Action fails to establish a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness, the record must "include[] findings of fact concerning the state of the art and the teachings of the references" The Manual of Patent Examining Procedure ("M.P.E.P.") § 2141(II) (8th ed., rev. 7, July 2008) (relying on KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d (BNA) 1385 (2007), and confirming the legal framework established by Graham v. John Deere Co., 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966)). Moreover, "[o]nce the findings of fact are articulated, [the rejection statement]

must provide an explanation to support an obviousness rejection under 35 U.S.C. [§] 103.” Id. If it is found that the prior art references fail to disclose all of the subject matter recited in a claim, the rejection statement “must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

Claims 1, 11, and 12 are the only independent claims included in the claim rejections under 35 U.S.C. § 103(a), and Applicants respectfully traverse the rejection of independent claims 1, 11, and 12 under § 103(a) at least because Fu, Gigliotti, Quinn, and Dent, regardless of whether they are viewed individually or as a whole, fail to disclose or render obvious all of the subject matter recited in any of amended independent claims 1, 11, or 12.

A. Amended Independent Claims 1, 11, and 12

Amended independent claims 1, 11, and 12, from which claims 2, 3, 5, 9-12, and 27-35 ultimately depend, each recite a device for monitoring an electromagnetic field emitted by the antenna, comprising “a communication module for transmitting said at least one RF power signal measurement to a remote processing facility, wherein the communication module is configured to receive, from the remote processing facility, a command for controlling the at least one RF power signal input to the antenna.” Fu and Gigliotti, regardless of whether they are viewed individually or as a whole, fail to disclose or render obvious at least this subject matter recited in amended independent claims 1, 11, and 12.

The Office Action concedes that Fu “does not specifically disclose that the communication module transmit said at least one RF power signal measurement to a remote processing facility.” Office Action at 5. In an apparent effort to remedy this conceded deficiency of Fu, the Office Action asserts that Gigliotti “discloses a communication module for transmitting a[n] RF power signal measurement to a remote processing facility (remote station WS).” Id. Applicants do not necessarily agree with the Office Action’s assertion. Nevertheless, Applicants have amended independent claims 1, 11, and 12 in the interest of advancing prosecution of this application. Specifically, Applicants have amended independent claims 1, 11, and 12 to recite “a communication module for transmitting said at least one RF power signal measurement to a remote processing facility, wherein the communication module is configured to receive, from the remote processing facility, a command for controlling the at least one RF power signal input to the antenna.” Fu and Gigliotti, regardless of whether they are viewed individually or as a whole, fail to disclose or render obvious at least this subject matter.

As admitted in the Office Action, Fu does not disclose “a communication module for transmitting at least one RF power signal measurement to a remote processing facility,” as recited in amended independent claims 1, 11, and 12. Gigliotti, which was cited only for its purported disclosure of a communication module for transmitting an RF power signal measurement to a remote processing facility, fails to remedy the deficiencies of Fu. Specifically, Gigliotti discloses a control unit 70 that is capable of selectively varying: (1) the frequency range in which monitoring of an electromagnetic field is performed and (2) the threshold level applied in device 60. Gigliotti at col. 4,

lines 39-47. The threshold level is the baseline against which measured electromagnetic field strengths are compared. Id. at col. 4, lines 8-10. However, varying the frequency range and threshold level to which electromagnetic field strengths are compared does not constitute “receiv[ing], from the remote processing facility, a command for controlling the at least one RF power signal input to the antenna,” as recited in Applicants’ amendment independent claims 1, 11, and 12. In fact, Gigliotti appears to be silent with respect to receiving commands for controlling antenna power input, and does not disclose or render obvious such a feature.

Because Fu and Gigliotti fail to disclose all of the subject matter recited in amended independent claims 1, 11, and 12, the Office Action “must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). Applicants respectfully submit that the Office Action has failed to articulate any rationale in purported support of why the differences between the subject matter recited in claims 1, 11, and 12, as amended, and the prior art would have been obvious to a person having ordinary skill in the art at the time the invention was made.

For at least the reasons outlined above, the Office Action fails to establish a *prima facie* case of obviousness with respect to amended independent claims 1, 11, and 12. Furthermore, each of claims 2, 3, 5, 9-12, and 27-35 depend either directly or indirectly from one of amended independent claims 1, 11, and 12 and should be allowable for at least the same reasons as claims 1, 11, and 12 are allowable. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-3, 5, 9-12, and 27-35.

B. Dependent Claims 4 and 6

In the Office Action, claims 4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti and further in view of Quinn. Claims 4 and 6 depend from amended independent claim 1, which is allowable for at least the reasons outlined above. Quinn, which was cited only for its purported disclosure of a device for averaging subsets of samples, does not remedy the deficiencies of Fu and Gigliotti outlined above. Therefore, the 35 U.S.C. § 103(a) rejection of dependent claims 4 and 6 cannot be maintained and should be withdrawn.

C. Dependent Claims 7 and 8

In the Office Action, claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti and further in view of Dent. Claims 7 and 8 depend from amended independent claim 1, which is allowable for at least the reasons outlined above. Dent, which was cited only for its purported disclosure of a plurality of measuring channels and a switch for selectively feeding the output signal of any of the measuring channels, does not remedy the deficiencies of Fu and Gigliotti outlined above. Consequently, the 35 U.S.C. § 103(a) rejection of dependent claims 7 and 8 cannot be maintained and should be withdrawn.

II. Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-12 and 27-35 in condition for allowance. Applicants submit that the proposed amendments to claims 1, 11, and 12 do not raise

new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the entering of this Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application, withdrawal of the claim rejections, and timely allowance of pending claims 1-12 and 27-35.

The Office Action contains characterizations and assertions regarding the claims and the cited art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants respectfully decline to automatically subscribe to any characterization or assertion in the Office Action.

If the Examiner believes that a conversation might expedite prosecution of this application, the Examiner is cordially invited to call Applicants' undersigned representative.

Please grant any extensions of time required to enter this Amendment and
charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 9, 2009

By: 

Brad C. Rametta
Reg. No. 54,387
(404) 653-6552